

EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances; (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and (iii) the aggregate uninvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to his home within a shorter period, he may, either periodically or in a lump sum, voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the LHA, a homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the LHA or the HBA.

(h) *Annual statement to homebuyer.* The LHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his NRMR. During the year, any maintenance or repair done on the dwelling by the LHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for his home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 904.113 and § 904.115.

(j) *Application of EHPA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the LHA is terminated or if the homebuyer vacates the home (see § 904.107 (m), (n) and (o)), the LHA shall charge against the homebuyer's EHPA the amounts required to pay

(i) The amount due the LHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 904.107; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 904.107.

(2) If the EHPA balance is not sufficient to cover all of these charges, the LHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the LHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repair has not yet been determined, if he has given the LHA notice of intention to vacate at least 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the LHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

§ 904.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The LHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for

the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMN shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMN shall be determined by the LHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyers Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the LHA and approved by HUD as part of the submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMN.* (1) The LHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the LHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount

of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMN for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMN exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMN based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMN.* (1) In the event the Homebuyer's Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMN. When a subsequent homebuyer moves in, the NRMN shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMN, the LHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMN, the homebuyer shall pay such deficit to the LHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMN balances for all the homes exceeds the estimated reserve requirements for 90 days the LHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds

shall be prorated and credited to each homebuyer's NRMN in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all NRMN balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMNs, and (iii) the aggregate uninvested balance of the NRMNs. A copy of this statement shall be made available to any authorized representative of the HBA.

§ 904.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures,

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty,

(3) Working capital for payment of a deficit in a homebuyer's NRMN, until such deficit is offset by future monthly payments by the homebuyer or at settlement in the event the homebuyer should purchase, and

(4) A deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly payments totaling less than the break-even amount for the Project.

(b) *Nonroutine maintenance—common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see § 904.108 and § 904.109) shall be determined by the LHA, with the approval of HUD, on the basis of estimates of the monthly

amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the LHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in § 904.109(c). When the operating reserve reaches the maximum authorized in paragraph (c) of this section, the break-even (monthly operating expense) computations (see §§ 904.108 and 904.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may be retained by the LHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, LHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see § 904.109 above for explanation of various categories of expense).

(d) *Transfer to homeowners association.* The LHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see §§ 904.118(c) and 904.119(f)). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be